

STAFF REPORT TO COUNCIL

Report Prepared By: Jake Belobaba, Director of Development Services
Chris Geiger, Director of Protective Services
Reviewed By: Allison McCarrick, CAO
Meeting Date: August 6, 2024
File No: 3900-16
RE: Short-Term Rental Regulation

RECOMMENDATION:

That Council:

1. Give first, second and third readings to “Short-Term Rental Bylaw, 2024, No. 2188”;
2. Pursuant to Section 59 of the *Community Charter* :
 - a. Receive written representations prior to adoption of Bylaw 2188; and
 - b. Direct staff to publish notice, no more than 10 and no less than 3 days prior to final consideration of Bylaw 2188:
 - i. online; and
 - ii. in one issue of the Ladysmith Chronicle; and
3. Direct staff to bring forward amendments to “Official Community Plan Bylaw 2022, No. 2200” for Council consideration that:
 - a. Establish a Temporary Use Permit program to allow the conversion of a limited number of dwelling units outside of zones where “tourist accommodation” is a permitted use, to Short-Term Rentals; and
 - b. Establish policies for considering applications under recommendation 3(a) that:
 - i. prioritize the protection of long-term housing; and
 - ii. consider temporary worker housing, tourism offerings, impacts on residential neighbourhoods, impacts on existing and proposed tourism offerings and similar issues.

EXECUTIVE SUMMARY:

This report recommends actions that further Policy 3.14 of the OCP. This includes introducing “Short-Term Rental Bylaw No. 2188” for Council consideration and direction to implement a Temporary Use Permit (TUP) program to allow a limited number of Short-Term Rentals (STR’s) in areas where they are not currently permitted. If adopted, Bylaw 2188 will prohibit marketing Short-Term Rentals (STR’s) contrary to zoning and will require a valid business license number to be posted in any listings advertising a STR in alignment with the Province’s new *Short-Term Rental Accommodations Act (STRAA)*. These recommendations align with the CVRD’s draft Workforce Housing Strategy which has been referred to the Town for feedback and is included in the August 6, 2024 Council Meeting agenda.

PREVIOUS COUNCIL DIRECTION:

Resolution	Meeting Date	Resolution
CS 2024-054	2024-03-19	That Council direct staff to bring forward for Council consideration: a) zoning amendments consistent with provincial SSMUH requirements to allow duplexes in restricted zones on all lots between 280-4050m ² in size; b) zoning amendments consistent with provincial SSMUH requirements to allow one single- family dwelling, one secondary suite and one coach house in restricted zones on lots smaller than 280m ² ; c) OCP amendments to align development permit requirements to be consistent with new SSMUH requirements; d) amendments to relevant bylaws to increase fines for illegal nightly rentals, and make existing STR rules clearer and aligned with provincial terminology; e) an Amenity Cost Charge Bylaw; f) amendments to the Town’s DCC bylaw to allow for a DCC charge for a new Fire Hall and shared provincial highway projects; g) amendments to the applicable bylaws to delegate the approval of “minor” DVPs to staff; and h) amendments to the applicable bylaws to increase range of staff-issuable DP’s, including DP’s for residential developments of four units or less.

INTRODUCTION/BACKGROUND:**Existing regulations for STR’s in Ladysmith*****Official Community Plan***

Policy 3.14 of the OCP is a housing policy that specifically applies to STR’s:

“3.14. Monitor the impact of short-term rental accommodation on long-term rental housing supply. Consider the short-term rental recommendations of CVRD’s Workforce Housing Strategy (2022) once complete.”

Section 3 of Part D of the OCP lists policy 3.14 as a “short-term” implementation action, i.e. intended to be completed within three years of the adoption of the OCP. Monitoring of STR’s is now possible through the Province’s Short-Term Rental Data Portal (described below) and the CVRD’s Workforce Housing Strategy is nearing completion. Strategy #3 of the current draft of the Workforce Housing Strategy recommends adopting a business licensing program and providing opportunities for STR’s through TUP’s and rezoning. The Workforce Housing Strategy was referred to Council and is included in the August 6, 2024 Council Meeting agenda.

Zoning and Business Licensing Bylaws

Under section 3.1 of Ladysmith’s Business License Bylaw, any business in Ladysmith—including a nightly rental —requires a valid business license. Outside of the C-2, C-4, CD-7 and A-RR¹ zones, nightly rental is limited to bed and breakfasts, i.e. renting one or more bedrooms within the owner’s principal residence. A map of zones that allow tourist accommodation is provided in

¹ Nightly rental is only allowed in certain areas in the A-RR zone.

Attachment B. Bylaw 2187, currently at third reading, will make changes to rules for bed and breakfasts and tourist accommodation uses. The most significant changes being:

- Using new and modified definitions to make existing prohibitions on renting dwelling units for nightly rental easier to understand; specifically using “guest room” to define rooms without kitchens offered in bed and breakfasts and “accommodation unit” to define rooms/units provided in tourist accommodation uses.
- Allowing bed and breakfasts in the R-2 zone.
- Removing the threshold of five accommodation units for tourist accommodation uses and allowing kitchens in accommodation units.
- New rules prohibiting bed and breakfasts in conjunction with coach houses, duplexes and multi-unit dwellings, to reflect Small-Scale Multi-Unit Housing (SSMUH) uses added to zones where bed and breakfasts are a permitted use.

Generally, Bylaw 2187 does not change existing prohibitions on renting dwelling units for nightly rental. However, the above-noted changes to rules for tourist accommodation use, are intended to fill gaps in local tourism offerings; specifically, the ability to rent a bylaw-compliant nightly rental with a kitchen in key areas such as the Downtown. Allowing nightly rental of dwelling units in these zones does not pose the same threat to the housing supply as doing so in residential zones, because zones that allow tourist accommodation cover only a small portion of the Town (e.g. A-RR and CD-7 zones), don’t allow residential use (e.g. the C-4 zone), or allow such a broad range of non-residential uses that housing can already be converted to a range of non-residential uses (e.g. in the C-2 zone, housing units can be converted to retail, office, etc.) Bylaw 2187 is described in greater detail in the June 27, 2024 report to Council.

The Short-Term Rental Accommodations Act and STR Portal

In the fall of 2023, the Province enacted the *Short-Term Rental Accommodations Act (STRAA)*. The *STRAA* has three purposes:

1. To return STR’s to the long-term housing market;
2. To give local governments stronger tools to enforce short-term rental bylaws; and
3. To establish a new Provincial role in the regulation of STR’s.

The *STRAA* applies to STR’s offered to the public through online platforms such as Airbnb, VRBO, Expedia, and FlipKey. The *STRAA* does not apply to hotels and motels, RV Parks and campgrounds. Under section 13(a) of the *STRAA*, STR operators must post a valid business license number in their listing, and platforms must share listing data with the Province each month. The Province can then share this data with local governments and does this through the Short-Term Rental Data Portal (the “STR Portal”)

Staff signed the necessary agreements to access the STR Portal earlier this year. Under the rules, select staff have access to listing data for listings within Ladysmith. There are strict rules for the

use and sharing of information from the STR Portal and detailed listing information cannot be shared with the public.

Under the *STRAA*, where a local government has a “business license requirement” in an “applicable short-term rental bylaw”, the local government can issue “Notices of Noncompliance” and “Takedown Requests”. A Notice of Noncompliance is a notification to the STR operator and platform advising them that a valid business license number has not been posted. A “Takedown Request” is issued by the local government to the platform that requires the listing to be removed. Takedown Requests must be sent within a period of 5 to 90 days after the Notice of Noncompliance is delivered. It is important to note that, unlike a Takedown Request, a Notice of Noncompliance does not prevent a STR operator from marketing or booking their STR through the platform, meaning the STR operator has at least 5 days to come into compliance with the *STRAA* and local government bylaws. Notices of Noncompliance and Takedown Requests are also processed by the Province through the STR Portal.

The business license requirement is foundational to the use of the STR Portal as a means of bringing noncompliant STR’s into compliance with the Town’s bylaws. The *STRAA* is unclear as to whether a general business license requirement for all businesses (such as the one already found in the Town’s Business License Bylaw) constitutes a “business license requirement” in an “applicable short-term rental bylaw”. However, enacting a simple “Short-term Rental Bylaw eliminates any ambiguity in this regard and creates additional options for enforcing against noncompliant STR’s.

Noncompliant STR’s in Ladysmith and their Impact

Listing data for the May 15-June 15, 2024 period (the “listing period”) was made available to staff through the STR Portal on July 2nd. The data indicates a significant number of unauthorized nightly rentals in Ladysmith, most of which represent a loss in available housing stock. Key observations are noted below:

- There are at least 42 listings in the STR Portal. At least 31 (73%) of these listings are for complete dwelling units, operated contrary to zoning.
- 19 listings (45%) appear to be secondary suites. At least nine suites (47%) are legal suites constructed with building permits² and at least six suites (31%) are new secondary suites in recently built homes. The Town has approximately 190 lawfully constructed suites, which suggests 5-10% of the Town’s secondary suites are being used for unauthorized STR’s.
- There is a diversity of unit sizes and types ranging from bachelor suites to homes with five or more bedrooms. There are a number of listings for apartments or condos.

² Staff confirmed this by cross-referencing listings with utility data.

- Virtually all listings are marketing extended periods of availability and staff estimate that for approximately 12 (39%) of the noncompliant listings the owners do not live on the property. It appears unlikely that many listings are temporary “home swaps”.
- Noncompliant listings represented approximately 211 room night stays during the listing period. The average and median number of room nights stays during the listing period were low; 6.8 and 2, respectively. For 13 out of the 31 (41%) noncompliant listings, the STR Portal showed no bookings for the listing period. For 9 out of 31 (29%) noncompliant listings, the STR Portal showed less than 10 bookings during the listing period. The remaining nine noncompliant listings accounted for 80% of STR room night stays during the listing period.
- It would appear that even with low booking numbers, a STR Operator can make as much or more than a typical monthly rent in Ladysmith. According to CMHC, the median monthly rent in Ladysmith for a 2-bedroom unit is \$1,400 or \$16,800/year. The 2-bedroom units listed on online STR platforms range from \$142-\$588/Night. At those rates, booking for only 10 nights per month results in approximately \$1,420-\$5,880 in monthly revenue.

Staff have sought data from CMHC in the hopes of estimating the effect of noncompliant nightly rentals on the Town’s vacancy rate but have yet to receive a response. Should Council endorse developing the TUP program below, and the impact of STR’s on the Town’s vacancy rate can be determined, this information can be incorporated in the TUP guidelines.

PROPOSAL:

Bylaw 2188

Bylaw 2188 has two main components:

1. It expands the existing requirement to have a business license to *operate* a STR by adding a new requirement to have a business license to *market* a STR and to post a valid business license number in any listings; and
2. It expands on existing zoning prohibitions that may prohibit *operating* a STR contrary to zoning, adding a new prohibition on *marketing* a STR that does not comply with zoning.

Bylaw 2188 will have no impact on compliant STR’s with business licenses and little impact on existing STR’s that are eligible for a business license (e.g. the use would be compliant with zoning). For noncompliant STR’s, Bylaw 2188 facilitates returning homes to the long-term housing market through Takedown Requests, which prevent property owners from marketing homes as STR’s, ideally incentivizing them to replace this income by providing housing. Table 1 provides a summary of the potential effects of Bylaw 2188 and the STRAA on existing STR’s in Ladysmith:

Table 1: Types of STR's and Potential Enforcement Actions

Scenario	Effect of Bylaw 2188 & STRAA
1. Fully compliant STR with a valid business license number in the listing platform	<ul style="list-style-type: none"> No effect
2. Fully compliant STR with valid business license: Business license number <u>not</u> posted in the platform	<ul style="list-style-type: none"> May receive Notice of Noncompliance Business license number must be posted in listing. May receive Takedown Request if license number not posted.
3. Eligible for a business license (i.e. complies with Town bylaws but does not have a business license)	<ul style="list-style-type: none"> May receive Notice of Noncompliance Will need to apply for a business license. Zoning/Bylaw compliance will be confirmed as part of the business license review process. May receive Takedown Request if license not obtained and posted.
4. Ineligible for business license (i.e. does not comply with zoning or another Town bylaw)	<ul style="list-style-type: none"> Cannot be issued a business license, unless STR is brought into compliance with bylaws. May be subject to Notice of Noncompliance. May be subject to Takedown Request.
5. Has existing business license but operating contrary to Town bylaws (i.e. operating STR contrary to zoning)	<ul style="list-style-type: none"> Business license may be suspended or revoked, in which case scenario four applies.

Proposed TUP Program

Considering the Workforce Housing Strategy, staff are recommending developing a TUP program that will allow a limited number of dwelling units outside of zones that permit tourist accommodation to be converted to STR's through a permitting process and based on prescribed criteria. Staff envision amendments to Part D, Section 3 ('Diverse and Affordable Housing') of the OCP that will build on Policy 3.14. This is expected to include:

- A limit on STR's in residential zones until a 3% vacancy rate is achieved.
- Policies that prioritize the protection of long-term housing stock and key types of housing that tend to be more affordable or serve populations in greater need (e.g. secondary suites, apartments, older housing stock, etc.)
- Evaluation criteria that support TUP issuance only if an applicant can demonstrate how the proposed STR will meet an unmet demand for tourist accommodation or temporary workers and how the loss of the housing unit will be mitigated.

ANALYSIS:

From a housing perspective, Policy 3.14 of the OCP calls for: 1) monitoring the impact of STR's on long-term rental housing supply, and 2) considering the Workforce Housing Strategy. The STR Portal allows the Town to meet the first objective and has revealed that noncompliant STR's are likely posing a tangible threat to the Town's housing supply. Regulating STR's is supported under the Draft Workforce Housing Strategy, which recommends regulating STR's through rezoning applications or TUP's until a regional 3% vacancy rate is achieved. As noted above, the Town's rental vacancy rate is extremely low (0.7%), and noncompliant STR's are likely a contributing factor. Noting the significant number of secondary suites currently being used for noncompliant

STR's, the introduction of provincial SSMUH requirements will make it increasingly important to prevent newly built SSMUH stock from being used as STR's. Overall, Bylaw 2188 and a TUP program are necessary to address housing shortages in Ladysmith.

From a tourism perspective, initial data suggests most noncompliant STR's are providing limited benefit to Ladysmith's Tourism economy. 70% of noncompliant listings booked less than 10 nights during the first recorded monthly listing period—and likely don't need more than that to make the equivalent of a monthly rent from a long-term tenant. Most noncompliant STR's are far from the Town's major amenities or commercial centers, diminishing their direct and indirect impacts on the Town's economy—e.g. a traveler staying in a suburban area on the edge of town will likely spend less in the Downtown than a traveler staying on 1st Avenue. Moreover, noncompliant STR's may be undercutting legitimate tourist accommodation providers and discouraging tourism investment. Many existing, compliant, accommodation providers must pay commercial taxes and will have invested in more expensive real estate (e.g. the Downtown, waterfront areas, etc.). When considering prospective accommodation providers, the draft Workforce Housing Strategy suggests there is an opportunity for 175 additional hotel rooms in the region³. Hotel development is one of the riskiest forms of real estate development. If STR's remain unchecked, accommodation providers looking to invest in Ladysmith, such as a hotelier interested in building the planned hotel under the Waterfront Area Plan, will analyze potential market share and see a significant loss of room nights to noncompliant operators. This may be compounded by the above-noted lack of housing, as tourist accommodation is a labour-intensive industry that relies heavily on front line workers—a labour market currently struggling to find housing.

A regulated and compliant STR industry in Ladysmith supports not only a sustained supply of housing, but strategic investments and economic growth the Town is actively seeking. Bylaw 2188 and the recommended TUP program build on the new tools provided by the Provincial Government to address noncompliant STR's and capitalize on a unique opportunity to shift the burden of local bylaw enforcement to the Province.

In summary, the proposed strategy represents one of the most effective, easiest, and economical ways to increase the housing supply in Ladysmith, is supported by the OCP and can be expected to support tourism development. Staff recommend endorsing the proposed bylaw and TUP development process as proposed.

ALTERNATIVES:

Council can:

1. Give no readings to Bylaw 2188 and/or direct staff not to proceed with developing a TUP program.
2. Amend Bylaw 2188 and give the bylaw first, second and third readings as amended.
3. Refer the matter back to staff for further review, as specified by Council.

³ By comparison, the Oyster Bay Mircotel has 81 units and the Waterfront Area Plan recommends a 40-80 unit hotel.

4. Specify an alternative course of action.

FINANCIAL IMPLICATIONS:

While Bylaw 2188 does impose new fines and TUP and business license applications may increase as a result of the proposed course of action, a significant increase in revenues is not expected. Notices of Noncompliance and Takedown Requests (which do not generate fines or other revenue for the Town) are likely to render fines unnecessary and business license and TUP applications are not a significant revenue generator for the Town.

LEGAL IMPLICATIONS:

By enacting Bylaw 2188, the Town's alignment with the business license requirements of the *STRAA* is solidified. The Province administers the STR Portal and the *STRAA*. Should the Town choose to use Notices of Noncompliance or Takedown Requests, the Province will execute these actions on behalf of the Town in accordance with the requirements under the *STRAA*.

CITIZEN/PUBLIC RELATIONS IMPLICATIONS:

Under section 59(2) of the *Community Charter*, Council must provide notice of a proposed business regulation bylaw and provide an opportunity for representations to Council. Section 59(3) of the *Community Charter* allows Council to specify how and when notice for Bylaw 2188 will be provided and how Council will receive representations. Staff are recommending that notification be carried out through the Town's webpage and the Ladysmith Chronicle. For representations, staff are recommending that written representations be received.

STR operators are likely well aware of the impacts of the *STRAA* due to Provincial and National media attention. As noted above, Bylaw 2188 has no impact whatsoever on STR's operating in compliance with the Town's bylaws and a negligible impact on otherwise legal STR's operating without a business license. In cases where STR's are operating contrary to Town bylaws, Bylaw 2188 simply opens the door for provincially executed enforcement through short-term rental platforms. In the case of new tools available through the STR Portal there is a mandatory notice and minimum amnesty period through the Notice of Noncompliance process. If conventional bylaw enforcement occurs, standard investigation and notification requirements apply. In both cases noncompliant STR operators can be expected to be given a reasonable period of time to comply with the Town's bylaws.

Under the *Local Government Act* and the Town's Development Procedure Bylaw, a TUP application requires notification of neighbouring properties, providing an opportunity for residents to comment when STR's are proposed in new locations.

INTERGOVERNMENTAL REFERRALS:

Staff have been in close contact with the Province's new Short-Term Rental Branch, to ensure the Town's obligations under the *STRAA* are being met and to learn how to use the STR Portal.

INTERDEPARTMENTAL INVOLVEMENT/IMPLICATIONS:

Development Services, Bylaw Enforcement and Business Licensing have been working jointly on implementing existing OCP policies for STR's and the STRAA. Once Bylaw 2188 is adopted and a TUP program is in place, Development Services will coordinate the review of TUP applications, Bylaw Enforcement will lead the use of the STR Portal for enforcement processes and Business Licensing will continue to process business licenses for STR's with review by Development Services and other departments to determine compliance with the Town's bylaws.

ALIGNMENT WITH STRATEGIC PRIORITIES:

- | | |
|--|---|
| <input type="checkbox"/> Core Infrastructure | <input checked="" type="checkbox"/> Economy |
| <input checked="" type="checkbox"/> Official Community Plan Implementation | <input type="checkbox"/> Leadership |
| <input checked="" type="checkbox"/> Waterfront Area Plan | <input type="checkbox"/> Not Applicable |

I approve the report and recommendation(s).

Allison McCarrick , Chief Administrative Officer

ATTACHMENT(S):

- A. Bylaw No. 2188
- B. Map of Tourist Accommodation Zones

Attachment A
TOWN OF LADYSMITH

BYLAW NO. 2188

A Bylaw to Regulate the Marketing of Short-Term Rentals in Ladysmith

WHEREAS the Council of the Town of Ladysmith deems it expedient to regulate the operation and marketing of Short-Term Rental businesses in Ladysmith;

AND WHEREAS the Council of the Town of Ladysmith wishes to prevent unlawful and unlicensed Short-Term Rentals from operating in Ladysmith, particularly unlawful and unlicensed Short-Term Rental businesses that remove homes from the long-term housing market;

NOW THEREFORE the Council of the Town of Ladysmith, in open meeting assembled, **ENACTS AS FOLLOWS:**

Definitions:

1. In this bylaw:

“*Business License*” means a valid and subsisting business licence issued pursuant to "Business License Bylaw No. 1513, 2003" as amended or replaced from time to time;

“*Business License Number*” means the number assigned to a *Business License* by the Town.

“*emergency housing*” means emergency housing as defined under “Business Regulations and Licensing (Rental Units) Bylaw 2021, No. 2093

“*market*” means to sell, offer for sale, promote, canvass, solicit, rent, advertise, book, arrange or facilitate rental, and includes placing, posting or erecting advertisements physically or online, but does not include the mere provision of a neutral space or location for such marketing in newspapers, bulletin boards or online;

“*Short-Term Rental*” means the business of marketing or providing accommodation or lodging to paying guest and includes hotels, motels, hostels, bed and breakfasts, campgrounds, recreational vehicle parks, and vacation rentals, but does not include the rental of dwelling units for residential purposes for a month or more under the *Residential Tenancy Act* or *emergency housing*;

Marketing of Short-Term Rentals:

2. No person shall *market* or operate a *Short-Term Rental* in Ladysmith without a valid *Business Licence*.
3. No person shall *market* a *Short-Term Rental* without conspicuously posting a valid *Business License Number* in all marketing materials.

Review of Business License Applications

4. For certainty, all provisions of Business Licence Bylaw No. 1513, 2003, as amended or replaced from time to time, apply to Short-Term Rental businesses.
5. The following shall be included with all applications for a *Business License* for a *Short-Term Rental* or for the renewal of a *Business License* for a *Short-Term Rental*:
 - a. A current title search of all the properties for which the applicant intends to operate as a *Short-Term Rental*;
 - b. The written consent of all owners listed on the titles of all properties for which the applicant intends to operate as a *Short-Term Rental*;
 - c. an accurate description of the layout, features and accommodation services proposed to be provided as part of the *Short-Term Rental*; and
 - d. such other evidence that the proposed *Short-Term Rental* will comply with the Town's bylaws that the License Inspector may prescribe from time to time.

Right of Entry and Inspections

6. In accordance with Section 16 of the *Community Charter*, the License Inspector, a bylaw enforcement officer or other person employed by the Town and designated by the Inspector may enter onto and into property to inspect and determine whether all regulations, prohibitions, and requirements established by this Bylaw are being met.

Offences and Penalties

7. Any person who:
 - a. carries on a *Short-Term Rental* business without holding a valid *Business License*;
 - b. breaches any term or condition of a *Business License*;
 - c. intentionally displays a false *Business License Number* in any marketing material advertising a *Short-Term Rental*;
 - d. intentionally submits false information in conjunction with an application for a *Business License* for a *Short-Term Rental*; or
 - e. violates any provision of this bylaw;

commits an offence of this bylaw, and is liable on conviction to a fine or penalty of up to \$5,000 for each offence.
8. For clarity, the License Inspector may suspend a *Business License* pursuant to the Business License Bylaw, upon being satisfied that a contravention of section 3 of this bylaw has occurred.

General

9. If any portion of this bylaw is found to be invalid by a court, the invalid portion may be severed and the remaining provisions shall continue to apply.

10. This bylaw comes into force on the day it is adopted.

Citation

11. This Bylaw may be cited for all purposes as “Short-Term Rental Bylaw, 2024, No. 2188”.

READ A FIRST TIME on the _____ day of _____, 2022
READ A SECOND TIME on the _____ day of _____, 2022
READ A THIRD TIME on the _____ day of _____, 2022
ADOPTED on the _____ day of _____, 2022

Mayor (A. Stone)

Corporate Officer (Sue Bouma)

